

REMARKS

This amendment is submitted in response to the non-final Office Action mailed on December 17, 2004. Claims 1-4, 6, 10-29 and 32-36 are pending in this application. In the Office Action, Claims 1-4, 6, 10-29 and 32-36 are rejected under 35 U.S.C. §103. In response Claims 1, 12-13, 21 and 33-34 have been amended, Claims 18-20 have been canceled and Claim 37 has been added. These amendments do not add new matter. In view of the amendments and/or for the response set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-4, 6, 10-17, 21-24 and 32-36 are rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5,285,041 to Wright ("Wright") in view of U.S. Patent No. 5,936,527 to Isaacman et al. ("Isaacman"). Claims 18-20 and 25-29 are rejected under 35 U.S.C. §103 as being unpatentable over *Wright* and *Isaacman* in further view of U.S. Patent No. 5,546,316 to Buckley et al. ("Buckley"). Applicants believe these rejections are improper and respectfully traverse them for at least the reasons set forth below.

The instant claims are directed, in part, to a food package for delivering a beverage product and a dispenser configured to prepare and dispense a beverage product. In contrast, Applicants respectfully submit that *Wright* is deficient with respect to the present claims, and *Isaacman* and *Buckley* fail to remedy the deficiencies of *Wright*. In fact, *Wright*, *Isaacman* and *Buckley* fail to disclose or even suggest a food package and dispenser for beverage products as presently claimed.

In particular, *Wright* is completely directed to cooking solid food with a microwave oven with the food being packed in rectangular tray packages. See, *Wright*, Abstract. *Wright* does not suggest products that are beverage-forming products as required by the present claims. In addition, *Wright* is also silent as to the preparation of a beverage from dilution of a beverage-forming product with a diluent, such as water, to provide the beverage.

Further, certain present claims have been amended to further specify that the programmable tag comprises preparation instructions, data or information that is relevant for configuring or setting the dispenser, e.g. the control unit, regarding the preparation of the beverage. In particular, these instructions, data or information are relevant for configuring the dispenser regarding varied parameters such as diluent temperature, beverage temperature, diluent ratio, mixing or whipping time, mixing or whipping speed, dispensing time, measured amount of

beverage-forming product and combinations thereof. These parameters are important when preparing the beverage.

In *Wright*, the main operations are defrosting or heating operations. See, *Wright*, column 2, lines 28-40. These operations are electronically controlled and are not related to a beverage dispenser. *Wright* discloses food packages having codes that can control the power level, time and sequence for the heating cycles of a microwave only. In contrast, the present claims provide a beverage dispenser that can be controlled by codes supported on the beverage-forming packages. These codes include information, data or instructions that can instruct or inform the processor of the dispenser in setting the relevant parameters necessary for preparing the beverage.

Applicants also respectfully submit that the Patent Office has incorrectly asserted that *Wright* teaches a food-forming product that can be powder. For example, column 8, lines 1-7 of *Wright* refer to controlling the power level, time and sequence for heating cycles and not a food-forming product that is a powder, concentrate or ready to eat as alleged by the Patent Office. See, Office Action, page 3. In fact, nowhere in *Wright* is the word powder even mentioned. Consequently, *Wright* is entirely directed to controlled heating of solid food packages having codes printed on the package and nothing more. *Wright* fails to disclose or suggest the present claims to one having ordinary skill in the art.

Wright also fails to disclose or suggest a beverage dispenser having operations involving the dilution of a beverage-forming product with a diluent that can be controlled by a programmable tag supported by the beverage-forming package. In fact, *Wright* fails to disclose or even suggest dilution or a diluent. This is a significant difference between *Wright* and the present claims and cannot be considered a mere change of design or variation because the present claims involve a whole different approach as to the control of a beverage dispenser. Not only do the parameters of the beverage-forming component need to be set up correctly, but the parameters regarding the diluent need to be set up correctly as well so that the desired beverage can be produced. For example, the diluent temperature and dilution ratio have to be properly controlled to deliver the desired beverage. In addition, the tag can set parameters in the dispenser relating to beverage variations to be produced such as foamed or non-foamed beverages by setting mixing or whipping parameters.

This type of control setting of parameters would traditionally be done by an operator with a computer directly or remotely setting the parameters on the machine. However, the coded system of the present claims offers the flexibility and the reactivity to change the features of the beverages without the need for operator intervention. It also offers the possibility to more rapidly change the type of beverage a dispenser can deliver to address the consumers' demands. In sum, control setting can be done without intervention of the operator whether remotely or on site. This control setting can be done from the manufacturing facility where the tag is programmed or in another suitable location. Further, the problem of incorrect settings or mistakes that occur when the type of beverage to be made is changed is also resolved because each beverage can have its own tagged control settings. Ultimately, this discussion shows that *Wright* is deficient in many ways with respect to the present claims.

Isaacman fails to remedy the deficiencies of *Wright*. *Isaacman* relates to an entirely different field than *Wright* and the present claims because deals with tracking objects, and more particularly, locating documents such as file folders utilizing a computer controlled radio frequency system and radio frequency tags that are attached to the objects. This is completely unrelated to food or beverage products. *Isaacman* fails to remedy the deficiencies of *Wright* because *Isaacman* does not teach or disclose anything regarding the control of parameters relevant for the preparation of a beverage. In addition, the tracking function of *Isaacman* is different from the function of setting parameters of technical components of a beverage dispenser such as a water pump, a whipping device, a heat, etc in accordance with the present claims. In fact, one having ordinary skill in the art would not find anything in *Isaacman* to address the problem of remotely or onsite programming of beverage machines.

Buckley also fails to remedy the deficiencies of *Wright* and *Isaacman*. *Buckley* is entirely directed to the vending of greeting cards and the like and has nothing to do with beverage-forming products or beverage dispensing as required by the present claims. Further, *Buckley* fails to disclose or suggest a programmable tag that could be affixed to packaged components. The system of *Buckley* only comprises computer equipment that enables consumers to personalize their cards. See, *Buckley*, Abstract. The retrieval of data from the system to a remote location only serves the purpose of improving customer service and providing marketing information. Unlike embodiments of the present claims, *Buckley* fails to teach interactivity between a programmed tag, a system and/or a remote communication network.

For the reasons discussed above, the combination of *Wright* in view of *Isaacman* and *Buckley* does not teach, suggest, or even disclose the present claims, and thus, fails to render the claimed subject matter obvious for at least these reasons. Accordingly, Applicants respectfully request that the obviousness rejections with respect to Claims 1-4, 6, 10-29 and 32-36 be reconsidered and the rejections be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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